

**Tuesday, June 27, 2006**

The Board met at its offices at 450 N Street, Sacramento, at 10:09 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Christopher Maynard, 318153

2003, \$1,092.00 Assessment

For Appellant:

Lisa Maynard, Representative

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant is entitled to head of household filing status for 2003.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.5)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Denise Swanston, 328624

1998, \$502,623.00 Assessment

For Appellant:

Kent N. Calfee, Attorney

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that she is not liable for the tax arising from her partnership interest in Duke Equities Partnership in 1998 because that liability was owed by her bankruptcy estate.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.6)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Apple Computer, Inc., 152016

1989, \$1,258,506.00 Assessment

For Appellant:

Christopher Whitney, Representative

Barry Weissman, Representative

For Franchise Tax Board:

John Su, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Issue: Whether dividends paid by appellant's foreign subsidiaries should receive preferential ordering or be prorated for purpose of determining whether the dividends (or what portion thereof) are deductible under several competing deductions statutes.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.7)

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Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang absent, Ms. Mandel not participating in accordance with Government Code section 15626, the Board submitted the appeal for decision.

The Board recessed at 11:50 a.m. and reconvened at 1:33 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

### **LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Meyer Pipe USA, Inc., 218249, 242098, 341255, 341257 (ARH)

9-1-00 to 3-31-02, \$40,651.28 Tax

7-1-01 to 7-31-01, \$10,100.00 Claim for Refund

7-1-01 to 7-31-01, \$21,346.00 Claim for Refund

7-1-01 to 7-31-01, \$5,533.98 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Forty Niner Sierra Resources, Inc., 267706 (KH)

4-1-00 to 3-31-03, \$1,323.05 Tax

Action: Redetermine as recommended by the Appeals Division.

Sukhbir Singh, 348438 (ET)

January 25, 2006, Notice of Seizure and Forfeiture, \$480 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sarjinder Singh, 347120 (ET)

December 15, 2005, Notice of Seizure and Forfeiture, \$855 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Chahla M. Chahlah, 347114 (ET)

September 19, 2005, Notice of Seizure and Forfeiture, \$110 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Reed Avenue Food Mart, Inc., 348430 (ET)

December 30, 2005, Notice of Seizure and Forfeiture, \$588.86 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Arthur Carasis, 311008

1998, \$51.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James O. Davenport, Jr., 270541

1999, \$1,134.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Pol B. Largo, 316356

2002, \$1,015.88 Assessment

Action: Sustain the action of the Franchise Tax Board.

Shing Lao Lee, 325847

2001, \$747.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dann McCreary, 311117

2001, \$3,012.00 Tax, \$753.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Edmund J. Regan, II, 312491

2000, \$19,053.00 Assessment

2001, \$13,003.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Karen F. Sedano Foster, 314963

2003, \$832.03 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas R. Delong, 297163

2002, \$1,060.25 Tax plus Penalties, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Carmel Ish-Sahlom, 288987

1998, \$26,810.00 Assessment

1999, \$4,286.00 Assessment

Action: Deny the petition for rehearing.

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**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Richard An, 330746

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ramona B. Bass, 328127

2005, \$327.50

Action: Sustain the action of the Franchise Tax Board.

Melaku K. Biru, 330745

2005, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Jacqueline J. Carter, 332653

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Myrtle J. Copfer, 318090

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Mikhael Elkin, 330463

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Julio V. Esquito, 328886

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Marilyn L. Goldsman, 330687

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Marva Harper, 328595

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Annie Bell Hudson, 329021

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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C. Hicks, 329968

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lida Khachatrian, 329464

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Cathy McPherson, 329588

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Dorothy W. McMurray, 335159

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Agnes Porter, 330360

2005, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Frank Reed, Jr., 328369

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Emma D. Robinson, 330352

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND AND DENIAL OF RELIEF OF PENALTY/INTEREST, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund and Denial of Relief of Penalty/Interest, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, Mr. Chiang not participating in *Edison Material Supply, LLC.*, 349909; Ms. Mandel not participating in accordance with Government Code section 87105 in *Caterpillar Financial Services Corporation*, 347957; the Board made the following orders:

Sealed Air Corporation, 326248 (OHB)

7-1-00 to 9-30-03, \$240,511.63

Action: Approve the redetermination as recommended by staff.

Barnes & Noble Booksellers, Inc., 307311 (OHB)

10-4-96 to 12-31-01, \$371,282.67

Action: Approve the redetermination as recommended by staff.

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Diamond Lease (U.S.A.), Inc., 326186 (OHB)

7-1-00 to 6-30-03, \$74,558.22

Action: Approve the redetermination as recommended by staff.

Christies, Inc., 339649 (OHB)

4-1-00 to 3-31-03, \$107,640.55

Action: Approve the relief of penalty as recommended by staff.

Hub Distributing, Inc., 349493 (EH)

10-1-05 to 10-31-05, \$55,629.22

Action: Approve the relief of penalty as recommended by staff.

Associated Ready Mixed Concrete, 349491 (AA)

7-1-05 to 9-30-05, \$88,828.40

Action: Approve the relief of penalty as recommended by staff.

Comdisco, Inc., 256315 (OHA)

10-1-03 to 12-31-03, \$129,311.00

Action: Approve the denial of claim for refund as recommended by staff.

Caterpillar Financial Services Corporation, 347957 (OHA)

1-1-02 to 6-30-04, \$120,931.73

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Advanced Respiratory, Inc., 349259 (OHA)

1-1-03 to 3-31-05, \$62,735.56

Action: Approve the denial of claim for refund as recommended by staff.

Edison Material Supply, LLC., 349909 (EAB)

10-1-01 to 9-30-04, \$76,812.78

Action: Approve the denial of claim for refund as recommended by staff. Mr. Chiang not participating.

Black Storm Networks, Inc, 282864 (GH)

4-1-03 to 6-30-04, \$134,642.00

Action: Approve the denial of claim for refund as recommended by staff.

In Phonic, Inc., 315294 (OHB)

1-1-03 to 3-31-05, \$62,339.08

Action: Approve the denial of claim for refund as recommended by staff.

Christies, Inc., 318316 (OHB)

4-01-00 to 3-31-03, \$98,054.71

Action: Approve the denial of relief of penalty/interest as recommended by staff.

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**SPECIAL TAXES MATTERS, DENIAL OF RELIEF OF INTEREST, CONSENT**

With respect to the Special Taxes Matters, Denial of Relief of Interest, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board made the following order:

Equilon Enterprises, LLC, 207970

8-1-00 to 8-31-00, \$1,103,199.37

Action: Approve the denial of relief of interest as recommended by staff.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following order:

BP West Coast Products, LLC, 326333 (EF)

1-1-04 to 12-31-05, \$101,622.46

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Cities of Los Angeles and San Jose, 352192

4-1-01 to 12-31-05, \$60,188.00 Tax for each City

Considered by the Board: December 13, 2005

Contribution Disclosures pursuant to Government Code section 15626: Not subject to disclosure.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board deferred consideration of this matter to the July 18, 2006, Board meeting.

Western Materials, LLC, 245621 (AR)

1-1-00 to 12-31-02, \$00.00 Tax

Considered by the Board: April 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition for rehearing be denied.

Donald A. Farrelly, 265253 (BH)

5-1-00 to 9-30-00, \$3,388.00 Claim for Refund

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the claim for refund be denied.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

John T. Berg, 300516

1984, \$778.00 Claim for Refund

Considered by the Board: February 1, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted a decision modifying the action with concession by the Franchise Tax Board.

Jerry J. Couchman, 281854

2001, \$3,353.00 Assessment

Considered by the Board: November 15, 2005

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition for rehearing be denied.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, DENIALS OF RELIEF OF  
PENALTIES AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY**

Quality Scientific Plastics, Inc., 242464 (JH)

1-1-00 to 6-30-02, \$81,809.02

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the redetermination as recommended by staff.

Lifescan, Inc., 345218 (GH)

1-1-04 to 6-30-04, \$999,450.96

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the denial of claim for refund as recommended by staff.

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ABC Window Company, Inc., 308317 (EH)

4-1-04 to 9-30-04, \$113,136.40

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the denial of relief of penalty as recommended by staff.

### **SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY**

Chevron U.S.A., Inc., 334951 (BH)

1-1-96 to 9-30-01, \$7,244,956.95

Considered by the Board: May 17, 2006

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the refund as recommended by staff.

Lifescan, Inc., 262515 (GH)

7-1-01 to 6-30-04, \$3,060,173.08

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the refund as recommended by staff.

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **PROPERTY TAX MATTERS**

##### **Board Roll Changes**

2002, 2003, 2004 and 2005 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board approved corrections to the 2002, 2003, 2004 and 2005 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 6.8).

#### **OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Offers in Compromise of Harriet Neal as recommended by staff.

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**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Edison Material Supply, LLC, 349920; Liberty Mutual Insurance Company, 287949; Southern California Edison Company, 281765; and, Walt Disney World Company, 349525*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Caterpillar Financial Services Corporation, 290240; and, Walt Disney World Company, 349525*; the Board made the following orders:

**New United Motor Mfg., Inc., 328131 (CH)**

7-1-00 to 6-30-03, \$87,772.76

Action: Approve the credit and cancellation as recommended by staff.

**G M A Pallet Recycling Corp., 348775 (EH)**

10-1-01 to 9-30-04, \$103,891.37

Action: Approve the credit and cancellation as recommended by staff.

**Edison Material Supply, LLC, 349920 (EAB)**

10-1-01 to 9-30-04, \$436,816.96

Action: Approve the credit and cancellation as recommended by staff. Mr. Chiang not participating.

**TEC Engineering, 340006 (OHB)**

4-1-95 to 9-30-02, \$84,784.38

Action: Approve the credit and cancellation as recommended by staff.

**Diagnostic Products Corporation, 347539 (AS)**

1-1-02 to 12-31-04, \$437,057.43

Action: Approve the refund as recommended by staff.

**Mc-Master-Carr Supply Company, 347329 (AA)**

1-1-02 to 12-31-04, \$140,220.68

Action: Approve the refund as recommended by staff.

**New United Motor Mfg., Inc., 343463 (CH)**

7-1-00 to 6-30-03, \$444,569.23

Action: Approve the refund as recommended by staff.

**Del Norte Chevrolet Olds, Inc., 334778 (FHA)**

1-1-03 to 12-31-05, \$656,606.85

Action: Approve the refund as recommended by staff.

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Professional Hospital Supply, Inc., 317291(EH)

4-1-02 to 9-30-05, \$72,468.45

Action: Approve the refund as recommended by staff.

Mercy Healthcare Sacramento, 347326 (KH)

10-1-02 to 9-30-05, \$132,300.86

Action: Approve the refund as recommended by staff.

D. L. Peterson Trust, 347127 (OHB)

4-1-00 to 12-31-03, \$184,649.45

Action: Approve the refund as recommended by staff.

Milgard Manufacturing, Inc., 348697 (OH)

7-1-02 to 6-30-05, \$10,753,747.74

Action: Approve the refund as recommended by staff.

Caterpillar Financial Services Corporation, 290240 (OHA)

1-1-02 to 6-30-04, \$68,338.56

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Daktronics, Inc., 271443 (OHA)

10-1-02 to 9-30-04, \$57,051.54

Action: Approve the refund as recommended by staff.

Lanier Worldwide, Inc., 339170 (OHC)

7-01-05 to 9-30-05, \$70,179.83

Action: Approve the refund as recommended by staff.

Resource Information Mngt. Sys., Inc., 347330 (OHA)

7-1-02 to 9-30-03, \$138,783.32

Action: Approve the refund as recommended by staff.

Advanced Respiratory, Inc., 217000 (OHA)

1-1-00 to 3-31-05, \$1,392,754.34

Action: Approve the refund as recommended by staff.

Financial Partners Credit Union, 325981 (AA)

4-1-04 to 6-30-05, \$253,819.32

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 342798 (KH)

2-21-06 to 3-28-06, \$301,873.00

Action: Approve the refund as recommended by staff.

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Liberty Mutual Insurance Company, 287949 (OHB)

1-1-01 to 12-31-04, \$533,340.65

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Vine Fuels, Inc., 347537 (KH)

10-1-02 to 9-30-05, \$59,963.00

Action: Approve the refund as recommended by staff.

Inrange Technologies Corporation, 220274 (OHB)

4-1-00 to 9-30-05, \$65,769.08

Action: Approve the refund as recommended by staff.

Manteca Homes Incorporated, 331808 (KH)

7-01-02 to 9-30-05, \$68,652.24

Action: Approve the refund as recommended by staff.

Sakhuja Enterprises, Inc., 145710 (BH)

1-1-99 to 3-31-02, \$573,823.52

Action: Approve the refund as recommended by staff.

WFS Financial, Inc., 341993 (EAA)

10-1-05 to 12-31-05, \$1,074,668.28

Action: Approve the refund as recommended by staff.

Vertis, Inc., 311529 (OHB)

4-1-04 to 3-31-05, \$60,752.27

Action: Approve the refund as recommended by staff.

Southern California Edison Company, 281765 (AP)

1-1-04 to 3-31-04, \$55,675.14

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

PPG Industries, Inc., 341193 (OHB)

7-1-05 to 9-30-05, \$51,258.82

Action: Approve the refund as recommended by staff.

Mc-Donnell Douglas Corporation, 336461 (OHA)

1-1-98 to 12-31-01, \$1,958,350.48

Action: Approve the refund as recommended by staff.

Erisco, Inc., 347437 (OHB)

7-1-02 to 9-30-03, \$108,216.34

Action: Approve the refund as recommended by staff.

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Pacesetter, Inc., 329196 (AC)

7-1-02 to 6-30-05, \$188,188.71

Action: Approve the refund as recommended by staff.

Cardinal Health 200, Inc., 347245 (OHA)

4-1-01 to 6-30-04, \$130,717.65

Action: Approve the refund as recommended by staff.

Walt Disney World Company, 349525 (AC)

10-1-96 to 12-31-01, \$51,722.65

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.  
Ms. Mandel not participating in accordance with Government Code section 87105.

Robertson Industries, Inc., 271681 (OH)

1-1-95 to 12-31-04, \$87,936.81

Action: Approve the refund as recommended by staff.

CIG Financial, 300327 (EAA)

1-1-03 to 3-31-05, \$821,130.00

Action: Approve the refund as recommended by staff.

Inwood Credit Union, 339717 (CH)

4-1-01 to 12-31-05, \$133,977.24

Action: Approve the refund as recommended by staff.

## CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Argonaut Group, Inc., 287738

1994, \$52,199.00 Claim for Refund

1995, \$690,951.00 Claim for Refund

1996, \$16,265.00 Claim for Refund

1997, \$884,165.00 Claim for Refund

1998, \$414,238.00 Claim for Refund

1999, \$1,311,083.00 Claim for Refund

For Appellant:

Derick Brannan, Representative

Jon Sperring, Representative

Craig Comeaux

For Franchise Tax Board:

Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Revenue and Taxation Code section 25137 may be used to combine the apportionment factors of insurance companies with those of general corporations.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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**SALES AND USE TAX APPEALS HEARINGS**

Assadullah Kohgadai, 260911 (CH)

7-1-00 to 6-30-03, \$11,682.00 Tax, \$1,168.19 Penalty

For Petitioner:

Assadullah Kohgadai, Taxpayer

Rohya Kohgadai Amiri, Participant

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to further adjustments to the protested measure of tax.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Nerio Fulvio Festa and Erich E. Hummler, 260750 (UT)

July 5, 2003, \$3,150.00 Tax

For Petitioner:

Nerio Festa, Taxpayer

For Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners have established that the aircraft was not purchased for use in this state.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 2:55 p.m. and reconvened at 3:07 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Frontier Dental Laboratories, Inc., 309841 (KH)

7-1-01 to 6-30-04, \$5,368.12 Tax

For Petitioner:

Kent Hallmeyer, Taxpayer

For Department:

Denise Riley, Tax Counsel

Cynthia Jacks, Participant

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's charges for OSHA fees on its sales of dental prostheses are subject to sales tax.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the petition be granted.

Tuesday, June 27, 2006

United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)  
United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)  
United Parcel Service, Inc., 272826 (CH)  
10-1-97 to 6-30-03, \$5,308,711.00 Claim for Refund

For Claimant: Richard D. Birns, Attorney  
Howard Mantel, Representative  
Brenda Fountain, Representative  
Bruce Macrae, Representative  
For Department: Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether use tax applies to gifts of tangible personal property which the donor, a common carrier, itself delivered from an out-of-state location to donees in this state.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### PROPERTY TAXES HEARING

Alpine PCS, Inc. (2746), 315652

2001, \$3,530,000.00 Escaped Assessment, \$353,000.00 Penalty, \$1,164,900.00 in Lieu of Interest  
2002, \$8,890,000.00 Escaped Assessment, \$889,000.00 Penalty, \$2,133,600.00 in Lieu of Interest  
2003, \$1,490,000.00 Escaped Assessment, \$149,000.00 Penalty, \$223,500.00 in Lieu of Interest

For Petitioner: Robert F. Broz, Taxpayer  
Michael Gendelman, Attorney

For Department: Dana Flanagan-McBeth, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Valuation Division correctly reclassified property, plant and equipment to future use property and leasehold improvements.

Whether the Valuation Division properly reclassified costs for "start up" and "preliminary engineering" as leasehold improvements.

Whether the Valuation Division failed to make sufficient reductions for extraordinary obsolescence in the value of petitioner's unitary property.

Whether petitioner is entitled to additional reductions for exempt application software.

Whether petitioner actually owned property reclassified and assessed as Future Use Property.

Whether the Board should abate the penalties for incomplete reporting and the assessments in lieu of interest.

Whether the Board should permit petitioner to introduce documents and information submitted with petitioner's hearing brief when that evidence was not provided with the petition.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 6.9)

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Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

## **PUBLIC HEARINGS**

### **Timber Harvest Values**

Mickie Stuckey, Chief, County Property Tax Division, Property and Special Taxes Department, made introductory remarks regarding the timber harvest values. On or before June 30, 2006, the Board will estimate the immediate harvest value and adopt schedules for each species or sub-classification of timber harvested between July 1 and December 31, 2006. (Revenue and Taxation Code section 38204(a).) (Exhibit 6.10.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the timber harvest values as recommended by staff.

### **Proposed Amendments to Motor Vehicle Fuel Tax and Diesel Fuel Tax**

Carolee Johnstone, Tax Counsel, Tax and Fee Programs, Legal Department, made introductory remarks regarding the proposed amendments to Motor Vehicle Fuel Tax and Diesel Fuel Tax Regulation 1125, *Two-Party Exchange*, and Regulation 1423, *Two-Party Exchange*, and amend Regulation 1123, *Supplier*, and existing Regulation 1420, *Supplier*. Proposed regulations permit two fuel suppliers to shift the primary liability for motor vehicle and diesel fuel tax from one supplier to the other under a two-party exchange agreement under certain conditions (Regulations 1125 and 1423, *Two-Party Exchange*), and proposed amendments specify that primary liability remains with the first supplier if those conditions are not met (Regulations 1123 and 1420, *Supplier*). (Exhibit 6.11.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted Regulations 1125 and 1423, *Two-Party Exchange*, and amended Regulations 1123 and 1420, *Supplier*, as published.

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**CHIEF COUNSEL MATTERS****RULEMAKING****Request concept approval on draft *Cigarette and Tobacco Products Licensing Regulations* (AB 71)**

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the requested concept approval on draft *Cigarette and Tobacco Products Licensing Regulations* (AB 71). (Exhibit 6.12.)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the staff recommendation.

**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 6.13).

Douglas R. Carroll, Business Taxes Compliance Supervisor III, Ventura District Office (Revision)

Victor V. Day, Administrator, Excise Taxes and Fees Division, Property and Special Taxes Department, Headquarters (Revision)

James D. Gallo, Business Taxes Representative, Culver City District Office

Patti M. Pomeroy, Business Taxes Compliance Specialist, Return Analysis Unit, Headquarters

Jo Anne Rushing, Business Taxes Representative, Centralized Collection Section, Headquarters

Robert L. Sayles, Jr., Supervising Tax Auditor II, Culver City District Office

Action: Approve the Board Meeting Minutes of March 7 - 8, 2006, March 28 - 29, 2006, and April 18, 2006.

Action: Approve time extensions for Butte, Lassen, Los Angeles, Madera, Modoc, Monterey, Orange, San Benito, Tehama, Yolo and Yuba Counties to complete and submit 2006-07 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 6.14).

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**OTHER ADMINISTRATIVE MATTERS****Executive Director's Report**

Ramon Hirsig, Executive Director, introduced Ms. Randie Henry, Deputy Director of Sales and Used Tax Department, who provided an update regarding the Department of Motor Vehicles Report of Sale Project (Exhibit 6.15).

Mr. Hirsig introduced Karen Johnson, Deputy Director of Administration, who provided an update regarding the Headquarters' Windows Project. Dave Edwards, Department of General Services, also reported on the timeline through phase two for the safety structure surrounding the building.

Mr. Hirsig introduced Karen Johnson, who provided an update regarding Budget Hearings.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered staff to write to the Department of Finance to urge the Governor to line-item veto \$1.9 million in the 2006-07 budget for the Retail Licensing Enforcement proposal.

**APPROVAL OF BOARD COMMITTEE MEETING MINUTES****Business Taxes Committee**

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the Business Taxes Committee Minutes of April 18, 2006 (Exhibit 6.16).

**Property Tax Committee**

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish and Ms. Yee voting yes, Mr. Leonard and Ms. Mandel voting no, the Board approved the Property Tax Committee Minutes (Exhibit 6.17).

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Jerrold Hawkes, 315717

2001, \$565.75 Late Filing Penalty, \$119.00 Fees

2002, \$1,203.25 Claim for Refund

For Appellant:

Appearance Waived

For Franchise Tax Board:

Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether respondent abused its discretion in refusing to abate interest.

**Tuesday, June 27, 2006**

Whether appellant has shown reasonable cause exists for the abatement of penalties.

Whether appellant has shown that collection cost and lien fees should be refunded.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.18)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD JUNE 27, 2006**

Christopher Maynard, 318153

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Denise Swanston, 328624

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

Apple Computer, Inc., 152016

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code section 15626, the Board ordered the appeal be submitted for written opinion sustaining the action of the Franchise Tax Board for the Board's consideration at the August 29, 2006, Board meeting. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

Argonaut Group, Inc., 287738

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Chiang abstaining, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 27,  
2006**

Assadullah Kohgadai, 260911 (CH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Nerio Fulvio Festa and Erich E. Hummler, 260750 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)  
United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)  
United Parcel Service, Inc., 272826 (CH)

Final Action: Mr. Parrish moved that the refund be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON PROPERTY TAXES HEARING HELD JUNE 27, 2006**

Alpine PCS, Inc. (2746), 315652

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 4:29 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (R&T Code §§ 7093.5, 30459.1, 6901 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 4:54 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

The Board adjourned at 4:55 p.m.

*The foregoing minutes are adopted by the Board on November 21, 2006.*

**Tuesday, June 27, 2006**

Note: The following matters were removed from the calendar prior to the meeting: *Adoption of the 2006-07 Private Railroad Car Tax Rate, Adoption of the 2006 Private Railroad Car Roll, Adoption of the 2006 State Assessed Property Roll, and, Legislative Committee Minutes.*

Note: The following cases were voluntarily postponed to a later date: *.ELS Educational Services, Inc., 306326; Mikhail Obolsky, 186902 (BH); Daimler Chrysler Corporation, 297523 (CH); and, Desert Grocers, Inc., 168288 (ET).*